

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AGUDAS CHASIDEI CHABAD OF THE
UNITED STATES,

Plaintiff,

v.

RUSSIAN FEDERATION, *et al.*,

Defendants.

Civil Action No. 1:05-cv-01548-RCL

SUPPLEMENTAL STATEMENT OF INTEREST OF THE UNITED STATES

Pursuant to 28 U.S.C. § 517,¹ the United States submits this Supplemental Statement of Interest in advance of the December 3, 2019 hearing on all pending motions.² In brief, for the convenience of Court, the United States summarizes its most pertinent prior Statements of Interest in this case and responds to a recent contention by Plaintiff concerning the Government's position. The United States also reiterates its position that the collection of books and manuscripts at issue in this litigation (i.e., the Schneersohn Collection) should be transferred to Plaintiff, but that out-

¹ Section 517 provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

² Those motions include Plaintiff Agudas Chasidei Chabad of the United States' Motion for a Protective Order, ECF No. 150; Plaintiff's Motion to Strike the United States' Statement of Interest, ECF No. 152; Plaintiff's Motion for Increased Sanctions, ECF No. 168; the Simon Wiesenthal Center's Motion for Leave to File an Amicus Brief in Support of Plaintiff, ECF No. 172; Plaintiff's Motion for an Order to Show Cause, ECF No. 175; Tenex-USA, Inc.'s Motion to Quash Plaintiff's Subpoena, ECF No. 176, Plaintiff's Motion for Leave to File a Surreply, ECF No. 184, and State Development Bank VEB.RF's (VEB) Motion to Quash Plaintiff's Subpoena, No. 19-mc-00271-LAK (S.D.N.Y. May 24, 2019), ECF No. 4. Note that the United States District Court for the Southern District of New York has transferred VEB's Motion to Quash to this Court. *See* Order, No. 19-mc-00271-LAK (S.D.N.Y. Aug. 17, 2019), ECF No. 25.

of-court dialogue with Russia, rather than litigation, presents the best opportunity for ultimate resolution.

I. The United States' Previous Statements of Interest

The United States has submitted a number of Statements of Interest in this case, some of which concern matters on which the Court has ruled, and some of which do not. For the Court's convenience, the United States summarizes the most pertinent Statements of Interest below.

A. Statements of Interest Regarding Matters on Which the Court Has Ruled

In 2010, the Court entered a default judgment against Defendants, the Russian Federation and its Ministry of Culture and Mass Communication, State Library, and State Military Archive, and ordered them to transfer the Schneersohn Collection to Plaintiff. *See* ECF Nos. 80–82. Defendants have not complied with this order. In 2011, Plaintiff moved for the imposition of monetary contempt sanctions. *See* ECF No. 92. The United States submitted two Statements of Interest in response. The first set forth the United States' interest in this matter and expressed its support for the transfer of the Schneersohn Collection to Plaintiff. *See* ECF No. 97. The second set forth the United States' opposition to the imposition of monetary contempt sanctions. *See* ECF No. 111. The United States also noted that such sanctions would not, in its view, advance efforts to resolve this dispute. *Id.* The Court found Defendants to be in civil contempt and imposed a \$50,000 per day fine pending Defendants' compliance. *See* ECF No. 115.

Plaintiff then filed a Motion for Interim Judgment of Accrued Sanctions, ECF No. 127, which, the United States argued in another Statement of Interest, was “not consistent with the Foreign Sovereign Immunities Act (FSIA) and is unwarranted as a matter of the proper exercise of this Court's equitable powers and remedial authority.” ECF No. 134. The Court granted the Motion for Interim Judgment of Accrued Sanctions and entered a \$43.7 million judgment in accrued contempt sanctions against Defendants. *See* ECF Nos. 143–45.

B. Statements of Interest Regarding Matters on Which the Court Has Not Ruled

Following the interim judgment, Plaintiff initiated third-party discovery seeking to locate Russian government assets by serving subpoenas on a number of large financial institutions in the United States. Plaintiff also filed a Proposed Protective Order concerning such discovery. *See* ECF No. 146. In response, the United States filed a Statement of Interest objecting to the Proposed Protective Order. *See* ECF No. 149. Plaintiff has opposed this Statement of Interest. *See* ECF No. 150. The Court has not issued a decision regarding Plaintiff's Proposed Protective Order.

In 2016, the United States filed a Statement of Interest reiterating the longstanding U.S. position that the Schneersohn Collection should be transferred to Plaintiff but that out-of-court dialogue, rather than litigation, is most likely to lead to a resolution. *See* ECF No. 151. The United States also expressed its view that Plaintiff's subpoenas were legally improper because monetary contempt sanctions cannot be enforced against foreign states under U.S. or international law and noted the reciprocity implications of this issue for the United States. Plaintiff filed a Motion to Strike the February 2, 2016 Statement of Interest but agreed with several of the banks that compliance with the subpoenas would be stayed pending the Court's disposition of the issues raised in the February 2, 2016 Statement of Interest. *See* ECF No. 152. The United States and Plaintiff have filed further response and reply briefs regarding the Motion to Strike. *See* ECF Nos. 155, 157. The Court has not issued a decision regarding Plaintiff's Motion to Strike.

II. Plaintiff's Assertion That the United States' Has Changed Its Position Is Incorrect.

Since the United States filed its last Statement of Interest in this case, Plaintiff has asserted in several filings that the United States no longer opposes contempt sanctions or Plaintiff's discovery efforts. *See* ECF Nos. 171, 175. This assertion is incorrect.³

³ For the reasons set forth in this section, the Court should deny Plaintiff's Motion for an Order to Show Cause. First, the United States has no obligation to respond to Plaintiff's motions. Second,

First, Plaintiff argues that the United States has changed its position because it has not (until now) filed a Statement of Interest addressing Plaintiff's Motion for Additional Interim Judgment of Accrued Sanctions, ECF No. 167, and Motion for Increased Sanctions, ECF No. 168. *See* ECF No. 171 at 2.⁴ Of course, as a nonparty, the United States is under no obligation to file a response to motions in this matter. Rather, the United States has discretion under 28 U.S.C. § 517 "to attend to the interests of the United States in a suit pending in a court of the United States." Although the United States carefully considered the Court's request to "update" the Statements of Interest, ECF No. 164 at 15, the United States did not file a response to Plaintiff's Motion for Additional Interim Judgment of Accrued Sanctions and Motion for Increased Sanctions because there were no material developments to bring to the Court's attention. There is, accordingly, nothing to infer from the United States' decision not to file a response.

Second, Plaintiff argues that the United States has changed its position because it argued in another matter before the Supreme Court that a district court could impose monetary contempt sanctions against a foreign state owned enterprise that failed to comply with a federal grand jury subpoena. *See* ECF No. 175 at 3–5. This assertion is incorrect, however. In that matter, *In re Grand Jury Subpoena*, No. 18-948 (U.S.), the United States argued that the FSIA does not apply in criminal cases, including when a court issues contempt sanctions in a criminal case. *See* ECF No. 175-1 at 18–38; *see also Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983) (observing that the FSIA "contains a comprehensive set of legal standards governing claims of immunity in every *civil* action against a foreign state or its political subdivisions, agencies or

as set forth herein, the United States has not changed its position through a recent filing before the Supreme Court, which was the premise of Plaintiff's Motion for an Order to Show Cause.

⁴ For ease of reference, pinpoint citations refer to the page numbers on the ECF header, not on the filed document.

instrumentalities” (emphasis added)). Accordingly, the United States argued that the Supreme Court should not review the Court of Appeals’ judgment to permit monetary contempt sanctions against a foreign state owned enterprise that failed to comply with a federal grand jury subpoena. At the same time, the United States made clear that its position was consistent with its opposition in civil cases to the “imposition of contempt sanctions for failure to comply with a discovery or injunctive order in part *because the sanctions would be unenforceable under the FSIA.*” See ECF No. 175-1 at 36 (emphasis added). The United States pointed to the FSIA’s limitation to civil proceedings and general principles of equity and comity: although “principles of equity and comity” guard “against the imposition of unenforceable contempt sanctions in civil litigation brought by a private party against a foreign state,” such principles do not exist when “the government is a party to [the] case and itself sought the contempt sanction in a criminal proceeding against a state-owned commercial enterprise.” See *id.* at 37. Further, as this Court has previously noted in this case, there is a distinction between imposition of contempt sanctions and subsequent enforcement of such sanctions. See ECF No. 116 at 6–7. Likewise, as the Government noted in its brief, the court of appeals in *In re Grand Jury Subpoena* explicitly declined to reach the issue of whether enforcement of contempt sanctions would be permitted. ECF No. 175-1 at 34. By contrast, the subpoenas at issue before this Court directly pertain to the enforcement of a monetary sanction judgment. Therefore, the United States’ position in *In re Grand Jury Subpoena* is entirely consistent with its previous Statements of Interest in this case.

III. Conclusion

In sum, the United States reiterates its support for the transfer of the Schneersohn Collection to Plaintiff through out-of-court dialogue. In addition, the views expressed by the Government in *In re Grand Jury Subpoena* are consistent with the views it has set forth in this action.

Dated: November 26, 2019

Respectfully submitted,

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